

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4768 OF 2007

Bajaj Auto Ltd. ... Petitioner

V/s

1. Dharampalsingh B. Rawat & anr. ... Respondents

Mr.J.P.Cama i/by M.S.Bodhanwalla & Co. for the
petitioner.

Mr. D.B.Rawat - respondent No.1 present in person.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 29TH OCTOBER, 2007.

P.C.:

1. This petition challenges the order passed by the Industrial Court in which it has answered the following issue in the negative:

"Whether the issue regarding the maintainability of the complaint as well as the limitation can be framed and decided as a preliminary issue ?"

2. The Industrial Court has rejected the application of the petitioner to decide the question as to whether the complaint is barred by limitation and also whether the

respondent is a workman within the meaning of Section 3(5) of the M.R.T.U. & P.U.L.P. Act.

3. In my opinion, after hearing the learned counsel for the petitioner and the respondent in person, the order of the Industrial Court rejecting the application of the petitioner to decide the issue of limitation as a preliminary issue must be set aside. The Industrial Court gets jurisdiction to entertain the complaint only if it is filed within the period of limitation prescribed under the M.R.T.U. & P.U.L.P. Act. The Industrial Court is empowered to condone the delay in filing the complaint by taking recourse to the proviso to Section 28(1). In the present case, the Industrial Court has not decided the application for condoning the delay which has been filed by the respondent workman and has instead embarked upon the enquiry in the main complaint. In my opinion, this procedure is impermissible. The Industrial Court must first decide whether the complaint is barred by limitation and if there is an application filed for condoning the delay, whether the delay can be condoned.

4. Hence, the order of the Industrial Court impugned in this petition is set aside. The Industrial Court shall decide the issue of limitation in the first instance and

then proceed to decide the complaint on merits. However, it is made clear that the issue as to whether the respondent is an employee/workman as defined under Section 3(5) of the M.R.T.U. & P.U.L.P. Act will be decided with the main complaint.

5. Petition disposed of accordingly.

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